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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/867,277	05/29/2001	Lars Peter Klitmose	P20000067	5508
26137	7590 08/04/2003			
PATENT DEPARTMENT SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP FOUR TIMES SQUARE			EXAMINER	
			RAMANA, AN	NURADHA
NEW YORK, NY 10036			ART UNIT	PAPER NUMBER
			3732	
			DATE MAILED: 08/04/2003	1

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application N .	Applicant(s)			
	09/867,277	KLITMOSE, LARS PETER			
Office Acti n Summary	Examiner	Art Unit			
	Anu Ramana	3732			
The MAILING DATE of this c mmunication app Period f r Reply	pears on the cever sheet	with the corresp ndence address			
A SHORTENED STATUTORY PERIOD FOR REPL' THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply - If NO period for reply is specified above, the maximum statutory period of the period for reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).  Status	36(a). In no event, however, may y within the statutory minimum of the will apply and will expire SIX (6) MG c, cause the application to become	a reply be timely filed  nirty (30) days will be considered timely.  DNTHS from the mailing date of this communication.  ABANDONED (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on 17 I	<u> March 2003</u> .				
2a) ☐ This action is <b>FINAL</b> . 2b) ☑ Th	is action is non-final.				
3) Since this application is in condition for allows closed in accordance with the practice under					
Disposition of Claims		,			
4)⊠ Claim(s) <u>21-38</u> is/are pending in the application	on.				
. 4a) Of the above claim(s) is/are withdraw	wn from consideration.				
5) Claim(s) is/are allowed.					
6)  Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.					
8)⊠ Claim(s) <u>21-38</u> are subject to restriction and/or	election requirement.				
Application Papers					
9) ☐ The specification is objected to by the Examine	r.				
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.					
If approved, corrected drawings are required in reply to this Office action.					
12) ☐ The oath or declaration is objected to by the Examiner.					
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a)⊠ All b)□ Some * c)□ None of:					
<ol> <li>Certified copies of the priority documents</li> </ol>	s have been received.				
2. Certified copies of the priority documents	s have been received in	Application No			
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.					
14) Acknowledgment is made of a claim for domestic	c priority under 35 U.S.C	. § 119(e) (to a provisional application).			
a) The translation of the foreign language pro	visional application has	been received.			
Attachm nt(s)	o priority under 00 0.0.0	33 120 4110/01 121.			
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice o	v Summary (PTO-413) Paper No(s) f Informal Patent Application (PTO-152)			

U.S. Patent and Trademark Office PTO-326 (Rev. 04-01) Application/Control Number: 09/867,277

Art Unit: 3732

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## **DETAILED ACTION**

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 21-35, drawn to a hand-held medical apparatus, classified in class 604, subclass 232.
- II. Claims 36-37, drawn to a method of making an apparatus, classified in class 604, subclass 28.
- III. Claim 38, drawn to a kit for self-treatment of a medical condition, classified in class 604, subclass 235.

The inventions are distinct, each from the other because of the following reasons:

Inventions III and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not have to be hand held. The subcombination has separate utility by itself such as being a hand-held apparatus.

Inventions II and I are related as process of making and product (herein apparatus) made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method of making can be used to make an apparatus that is not hand held.

Inventions II and III are related as process of making and product (herein apparatus) made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method of making can be used to make an apparatus that is not used for self-treatment of a medical condition.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group III, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to the Attorney of Record to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:30 am and 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

AR Armadla Ramara June 2. 2003

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PRIMARY EXAMINER